



VILLAGE OF BARRINGTON

**WRITTEN TESTIMONY OF
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(Village of Barrington, 200 South Hough Street, Barrington, IL 60010; 847/304-3400)
BEFORE
THE HOUSE COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE
HEARING ON H.R. 6707, the "Taking Responsible Action for Community Safety Act"**

SEPTEMBER 9, 2008

Good afternoon, Chairman Oberstar, Ranking Member Mica and Members of the Committee. My name is Karen Darch. As the President of the Village of Barrington and Co-Chair of a bipartisan Coalition formed by local and county elected officials in northern Illinois and Indiana in response to a proposed rail transaction by Canadian National (CN) that will have devastating environmental and safety impacts on many of the collar suburbs of the greater Chicagoland area, I am pleased to have the opportunity to be here today to speak to this distinguished Committee in support of H.R. 6707, the "Taking Responsible Action for Community Safety Act" (TRACS Act.)

The legislation that Chairman Oberstar has drafted and co-sponsored with 20 members of Congress provides a much-needed and long overdue technical clarification to the federal law applicable to large Class I railroads. The legislation would make it absolutely clear to the railroad industry and to the Surface Transportation Board (STB) that the public interest of residents and communities threatened by the negative environmental and safety impacts of large railroad M&A transactions must be considered on an equal basis with the alleged transportation benefits of any such transactions during the regulatory review process.

As a municipal elected official responsible for developing local ordinances that balance the needs of our residents with business development goals, I know full well that members of this Committee have an important and challenging responsibility when it comes to establishing public policies that facilitate freight movement while protecting the interests of communities that are coping with an unprecedented growth in rail freight traffic. However, the economic and system benefits that may accrue to a large railroad company from a particular merger or acquisition need to

be carefully weighed against other equally valid safety and environmental impacts that will result from any such transaction. This is particularly important if significant volumes of freight traffic will be re-routed through high density residential areas that were not designed for and do not have the infrastructure to accommodate such drastic changes. The only way to achieve the necessary balance is to consider the interests of the freight railroads and the affected communities on a level playing field.

Based on my experience over the past 11 months since the CN proposal to acquire the EJ&E was announced, it has become evident that CN and the other large railroads do not believe the STB has the authority under current law to consider the environmental impacts of such large railroad transactions on an equal footing with rail shipper and competition issues. The STB's treatment of past M&A transactions involving large railroads provides further confirmation that, as a practical matter, the STB itself appears to doubt whether it has the authority to reject such transactions on environmental grounds. This ambiguity needs to be clarified through H.R. 6707 if the environmental review process mandated by NEPA is to have any significance in large railroad transactions subject to STB review.

Experience Learned from the CN Transaction:

Since CN applied to the STB last fall for approval of its proposed plan to purchase and re-route significant volumes of freight traffic onto the EJ&E rail line that loops through residential communities northwest of downtown Chicago, my Village has been actively involved in the STB regulatory process as a voice of opposition because we've had no choice. The line CN wants to buy and transform into a high-density corridor for mile-long intermodal trains runs right through the heart of Barrington -- intersecting at grade level with four busy roads in the center of the Village that are used by our residents and visitors to access downtown businesses, medical facilities, and local schools, and that serve as regional commuter corridors. Over the ensuing months, numerous other communities along the EJ&E line have joined forces to protect our shared interest in avoiding the significant environmental and safety harms that our constituents will experience as a result of the CN proposal. That shared interest to speak as a unified voice of opposition on this transaction led to the creation of the TRAC Coalition that I co-chair with Tom Weisner, the Mayor of Aurora, Illinois.

Over the last several months, the TRAC communities have worked within the dictates of the STB review process as it exists and attempted to discuss our concerns about mitigating environmental and community impacts with CN. However, there has been little reason for CN to take these discussions seriously. CN publicly states that it is negotiating with affected communities on mitigating the problems its operations over the EJ&E line would cause, but effectively operates on the assumption (supported by the Board's disposition of prior cases similar to the EJ&E acquisition) that the Board does not have the authority to block the transaction on environmental grounds and therefore it is not obligated to fund any meaningful mitigation measures sought by the affected communities.

From a process standpoint, everyone at the STB has been nothing but courteous, pleasant, and professional. However, we don't have any real sense at this point that our public comments on the environmental issues will make a bit of difference in the final decision the Board makes on whether to approve or reject the transaction. We have looked at the precedents in these types of proceedings. With one minor and very distinguishable exception, the STB has uniformly approved such transactions subject to certain limited mitigating conditions that often require nothing beyond compliance with other applicable law. The STB has never rejected or even seriously considered rejecting a comparable transaction on environmental impact grounds, and has never shifted the burden of meaningful mitigation to the railroad applicant. We truly believe that, in the absence of H.R. 6707, the STB will reach the same conclusion in the CN transaction.

The STB should be required to disapprove a proposed acquisition involving a large railroad and major traffic shifts if community harms outweigh the transportation benefits. Under NEPA, federal agencies are not authorized to contemplate environmental impacts as an abstract exercise, but instead must consider those environmental impacts as an important component of the agency's process of deciding whether to approve a federal action. Unfortunately, it is not clear from prior precedent that the STB believes that it has the authority to approve or reject such a large railroad transaction on anything other than competitive grounds. From its recent filings, CN certainly does not believe the STB has the option to say "no" when environmental impacts outweigh the transaction's purported transportation benefits.

The Need to Pass H.R. 6707:

Under H.R. 6707, the STB would be required to conduct an environmental review process that insures that all environmental impacts are fully evaluated and weighed against the purported benefits of the transaction. This Committee needs to approve the TRACS Act to clarify for everyone that the STB has a duty to serve the taxpayers of this nation by stating that if the environmental harms to affected communities outweigh the transportation benefits and cannot be adequately mitigated by the railroad, these large railroad transactions need to be rejected.

In his concurring comments in the July 24 Board decision setting a timetable for a decision on this transaction, STB Commissioner Douglas Buttrey stated the following: *“For this proposed transaction, the scope, in terms of track mileage and transaction cost, is relatively low. However, the issues related to environmental impacts, mitigation costs, and impacts on the affected communities both now and in the future appear to be incredibly high. ...it is hard to imagine how even the most far-reaching mitigation measures would be enough to offset or balance the environmental detriments that would flow from this proposal.”*

We believe that Mr. Buttrey’s assessment in this case is absolutely correct – we couldn’t have said it better ourselves. His statement gives the TRAC communities reason to hope that we will not be railroaded by CN and that a meaningful environmental review and evaluation process will be followed for the nearly 2 million residents of the greater Chicagoland region who will be negatively impacted if the CN deal is approved without adequate mitigating conditions. Passing H.R. 6707 into law will insure that our voice will be heard and considered fairly in the regulatory process.

Railroad law that makes American communities second class citizens in the regulatory review process is a relic of another era. The railroads of today are highly profitable and they can well afford to make the investments necessary to integrate their operations into our communities. They will not do so, however, unless they are incentivized to do so by a law like H.R. 6707 that makes it clear that environmental and safety impacts on affected communities will be considered on a level playing field with purported transportation benefits.

The TRAC communities are facing harms that any community across this country can face absent passage of the TRACS Act. Much of our rail infrastructure was laid when vast stretches of the country were sparsely populated and rail served as a vital point of connectivity for small

outposts. Today, we confront a vastly different landscape. In those cases in which the negative community impacts outweigh the transportation efficiencies for one private company, it is only rational that our public policy not compound an existing wrong by placing the interest of a railroad above all else. H.R. 6707 is a law that's time has come, and the communities of TRAC speak in one voice in asking that this Committee take the first step in making this bill the law of the land before Congress adjourns. Thank you.